188

(2)

Supreme Court, U.S.
FILED
JUN 13 2011
OFFICE OF THE CLERK

No. 10-1185

IN THE

Supreme Court of the United States

JACK LIGON,
Petitioner,

v.

RAY LAHOOD, SECRETARY OF DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER REPLY TO THE RESPONDENT'S BRIEF IN OPPOSITION

REBECCA L. FISHER
Counsel of Record
REBECCA L. FISHER & ASSOCIATES
P.O. Box 417
McGregor, Texas 76657
(254) 840-0220
rfisher@hot.rr.com

Attorney for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

IN THE

Supreme Court of the United States

No. 10-1185

JACK LIGON,

Petitioner,

v.

RAY LAHOOD, SECRETARY OF DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER REPLY TO THE RESPONDENT'S BRIEF IN OPPOSITION

Petitioner, Jack W. Ligon, respectfully submits this Reply to the Respondent's Brief in Opposition. The question in this case is whether the jurisdiction conferred by the Age Discrimination and Employment Act (ADEA), 29 U.S.C. § 633(a), is displaced by a provision of the Federal Aviation Act (Aviation Act) granting the Courts of Appeal exclusive jurisdiction to review orders related "to aviation duties and powers designated to be carried out by the administrator" of the FFA, 49 U.S.C. § 46110. The Petitioner would also like to draw the Court's attention to a subsequent filed Petition for a Writ of Certiorari in

10-1330, *Jones v. United States,* whereby the exclusivity of the federal sector jurisdiction provisions of Title VII, 42 U.S.C. § 2000e-16, is displaced by the Aviation Act.[1]

Petitioner Ligon, as well as Petitioner Jones, and the Solicitor General agree that ADEA and Title VII "provides the exclusive judicial remedy for claims of discrimination in federal employment". *See BIO, #10-1185 Ligon vs LaHood 9. Also see BIO, #10-1330 Jones vs United States 11.* Petitioner Ligon and Petitioner Jones have also asserted that *Bivens* cases do not control when a Plaintiff files suit under ADEA or Title VII. Likewise, the Solicitor General clearly states the same. *Id.* The Lower Court in both Ligon and Jones improperly based their reasoning for displacing and/or preempting ADEA and Title VII with the Aviation act on *Bivens* cases.

Both the Government and Petitioners Ligon and Jones have asserted that the District Courts have exclusive jurisdiction over a discrimination claim, either under ADEA or Title VII, but this was rejected by the Lower Court. Although, the Government asserted that a disappointed DER Applicant in fact could receive the same relief or even more relief from the administrative process than from an ADEA suit, that is immaterial, since exclusive jurisdiction over discrimination and retaliation claims is maintained by the District Courts.

---

[1] Prior the filing of the Petition for Writ of Certiorari in this case, there was a previously filed Petition in 10-374, *Zuress v. Donley*, whereby Petitioner Zuress' Title VII claim was barred by the extra-statutory principle that military employees may not bring suits that are "integrally related" to their military service.

Furthermore, Petitioner cites to his Petition for Writ of Certiorari and Petitioner Jones' Writ of Certiorari, as well as Petitioner Jones' Reply, which clearly outlines the split in the jurisdiction regarding the issue of the exclusivity of the federal sector jurisdiction provisions of Title VII and ADEA. This is a question which clearly needs to be answered and resolved by this Court. This Court's decision will have significance to those who are in federal sector employment and who seek redress for discriminatory actions. Furthermore, as noted in Petitioner's Brief, the Lower Court's decision weakens ADEA when the American workforce, including federal employees, is an aging workforce in need of ADEA's protection.[2]

Petitioner Ligon has requested that the threshold issue of whether or not he is an employee be determined, which would then determine whether he should proceed under ADEA with the exclusive jurisdiction given to the District Courts or whether Petitioner Ligon should proceed under the Federal Aviation Act to address the decertification of his designated authorities. Petitioner Ligon has requested that if he is determined not an employee and there-

---

[2] The Respondent's BIO on Pg. 6, footnote 4 assets that Petitioner's complaint, which had included a due process claim that was dismissed after Petitioner's Counsel "acknowledged that it lacked merit." Although Respondent's footnote is not material regarding the question now before this Court, Petitioner does wish to address the Respondent's footnote. It is not correct. Petitioner's Counsel never stated that the due process claim had lacked merit. Petitioner's Counsel even requested the Court to change that entirely false statement in the Motion to Amend Judgment. [Doc. 42]. The Court did not do so. Furthermore, one can look at the transcript of the telephonic hearing and note that there is no such acknowledgment by Petitioner's Counsel. In an abundance of caution, Petitioner's Counsel strongly rebuts this false statement.

fore not subject to ADEA, that his decertification under the Aviation Act be transferred from the District Court to the Court of Appeals under 28 U.S.C. § 1631.

There needs to be an answer regarding the exclusivity of the federal sector jurisdictional provisions of ADEA and Title VII, and the relevance of whether or not Petitioner Ligon is an employee subject to ADEA's exclusive jurisdiction. Petitioner, in compliance with ADEA, was mandated to exhaust certain administrative provisions, which he did, before he could file an ADEA suit. If Petitioner Ligon is not subject to ADEA, his case should have been transferred to the Court of Appeals under 28 U.S.C § 1631. Certainly the determination of whether Petitioner Ligon was subject to ADEA or to the Federal Aviation Act is reasonable grounds for the failure to file within sixty (60) days, since at all times, the Petitioner was timely in processing his ADEA claims. Petitioner request that the Court grant Certiorari in this case so that the important question of whether the jurisdiction conferred by ADEA and by Title VII is displaced/prempted by provision of the Federal Aviation Act.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

REBECCA L. FISHER
Counsel of Record
REBECCA L. FISHER & ASSOCIATES
P.O. Box 417
McGregor, Texas 76657
(254) 840-0220
rfisher@hot.rr.com

June 2011

Attorney for Petitioner